

REMARKS

Claims 11-32 have been canceled; claims 1, 7, 9, 10, 43, 44 and 45 have been amended. These changes have been made to place the application in better form for examination and to further obviate the 35 U.S.C. §§102 and 112 rejections set forth in the Office Action dated September 3, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claims 1, 8, 17 and 43 for the inclusion of a blank line where the ATCC Accession number should be. Upon allowance of this application, Applicant will amend claims 1, 8 and 43 with the ATCC Accession number. Claim 17 has been canceled. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-18, 27, and 33-47 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As stated in the specification on page 39, the seed deposit is being maintained by Applicant at its Breckenridge, Minnesota facility. The deposit will be available to the Commissioner during the pendency of this application and, upon allowance of any claims, a deposit of the sunflower seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) the viability of the biological material at the time of deposit will be tested; and

- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 11-18 and 27 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has canceled claims 11-18 and 27. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 43-47 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has amended claims 43-45 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 11-18 and 27 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has canceled claims 11-18 and 27. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 11-18 and 27 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has canceled claims 11-18 and 27. Withdrawal of this rejection is respectfully requested.

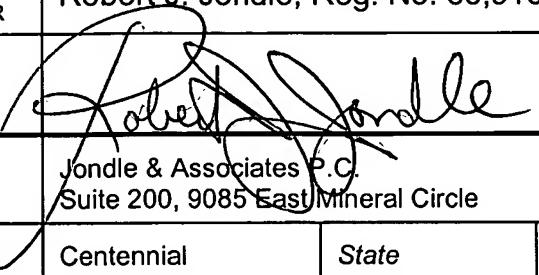
The Examiner has rejected claim 27 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has canceled claim 27. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 13 and 16 under 35 U.S.C. §102(b) as being anticipated by Cole (US Patent No. 5,866,766). Applicant has canceled claims 13 and 16. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102 and 112. Reconsideration of this application and early notice of allowance is requested.

Application No. 10/809,771
Amendment dated December 3, 2004
Reply to Office Action dated September 3, 2004

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